IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1653 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHAVNAGAR MUNICIPAL CORPORATION

Versus

GUJARAT PRADESH MUNICIPAL KARAMCHARI MAHA SANGH

Appearance:

1. Special Civil Application No. 1653 of 1999

MR HS MUNSHAW for Petitioner No. 1

MR MUKESH H RATHOD for Respondent No. 1

MR NIRDOSH H RATHOD for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 29/07/2004

ORAL JUDGEMENT

1.0. The petitioner by way of this petition has challenged the judgment and award of the Industrial

Tribunal, Bhavnagar dated 17th September, 1998, passed in Reference [I.T.] No. 183/91 whereby the Industrial Tribunal has directed the petitioner-Corporation to regularize the workmen in the cadre of Junior Clerk w.e.f. 16th May, 1992 and to pay the consequential benefits to the present respondent.

2.1. The short facts of the case are that the respondent-workmen were engaged as daily wagers without following any recruitment procedure or even without calling the names from the employment exchange and they were provided work depending upon the availability of work. It is the case of the petitioner-Corporation that the respondent-workmen approached the Industrial Tribunal, Bhavnagar by filing Reference [I.T.] No.183/91 praying for regularization.

2.2. The petitioner-Corporation further submitted that during the pendency of the Reference, the respondent-workmen were regularized in the service w.e.f. 1st April, 1996, pursuant to the policy evolved by the Corporation. The grievance of the petitioner-Corporation is that though the Transport service was discontinued the respondent-workmen were continued and absorbed in other departments, the Tribunal ought not to have regularized the services of the respondent-workmen w.e.f 16th May, 1992 with all consequential benefits. Hence, this petition.

3.1. Mr. Munshaw learned advocate appearing for the petitioner-Corporation submitted that the Tribunal has committed error in not considering the contentions raised by the petitioner-Corporation namely, the seniority list i.e. the persons who are referred as juniors to the respondent-workmen are in fact seniors.

3.2. As against that Mr. Rathod learned advocate appearing for the respondent-workmen has supported the judgment and award of the Tribunal. Mr. Rathod further submitted that they should be confirmed from 1st April, 1996, whereas they ought to have been confirmed on 16th May, 1992 i.e. the date on which their juniors were confirmed.

3.3. As a result of the hearing, it is clear that the dispute in question is with regard to the date of promotion given to the juniors. This can be adjudicated only by the Labour Court / Industrial Court.

4.0. I have heard the learned advocates for the respective parties. Under the circumstances, a consensus

has been arrived at by both the parties to remand the matter to the Tribunal only for deciding the issue i.e. from which date the benefits shall be granted to the respondent-workmen.

5.0. In the result, the petition is partly allowed. The order passed by the Industrial Tribunal dated 17th September, 1998, in Reference [I.T.] No. 183/91 is quashed and set aside and the matter is remanded to the Industrial Tribunal for fresh decision as observed above. It is directed that the Industrial Tribunal will also consider the sanctioned posts and the date on which any juniors of the respondent-workmen were given promotion or confirmed on the post of clerk. The Tribunal shall decide the matter within a period of six months from the date of receipt of this order. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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